WILLIAM T. BERTAGNOLE

IBLA 84-866 Decided May 23, 1985

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying color-of-title application U-52468.

Reversed and remanded.

1. Administrative Procedure: Burden of Proof -- Color or Claim of Title: Generally
   The burden of establishing a valid color-of-title claim is on the claimant.

2. Color or Claim of Title: Generally -- Color or Claim of Title: Applications -- Color or Claim of Title: Good Faith

   An applicant who believes or has reason to believe that title to land is in the United States at the time when he acquires it does not hold color of title in good faith.

3. Color or Claim of Title: Good Faith

   Good faith under the Color of Title Act requires that the claimants and their predecessors in interest honestly believe themselves seized of the title, and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to the claimants or a predecessor. However, undocumented hearsay evidence, indicating a lack of good faith because some people in the community are aware of the title being in the Federal Government, will not overcome substantial and documented evidence that the applicant acted in the good faith belief that he was seized of title.

APPEARANCES: Gerald H. Kinghorn, Esq., and James W. Carter, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

William T. Bertagnole has appealed the August 6, 1984, decision of the Utah State Office, Bureau of Land Management (BLM), which denied his color-of-title application U-51468 for a tract of land situated in Summit County, Utah. 1/

Appellant filed his application with BLM on December 20, 1982, pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1982), for approximately 0.35 acres of land located in sec. 15, T. 2 S., R. 4 E., Salt Lake Meridian, Utah. The application was filed for both class 1 and class 2 claims.

BLM denied the application because it did not meet the requirements of the Color of Title Act and the "provisions of decisions of the Department of the Interior."

As noted in the decision, a claim of class 1 under the Color of Title Act is

> one which has been held in good faith and in peaceful adverse possession by the claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation.

43 CFR 2540.0-5(b).

The remainder of 43 CFR 2540.0-5(b) provides as follows:

> A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

Appellant states that he acquired the property from Mary Dudley by quitclaim deed dated May 2, 1980, recorded May 5, 1980, at book M 157, page 388 of the records of Summit County, Utah. Appellant asserts that his

1/ The lands encompassed by the application are described as follows:
"BEGINNING at a point which is South 43 degrees 33'01" East 1029.46 feet from the East 1/4 corner, Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian and running thence South 76 degrees 42'50" East 116.35 feet; thence South 09 degrees 47'00" West 98.38 feet thence South 80 degrees 29'00" West 129.40 feet; thence North 14 degrees 51'00" East 51.12 feet; thence North 10 degrees 38'40" East 97.35 feet; to the point of BEGINNING."

chain of title to the property extends, unbroken, back to a quitclaim deed from Summit County to Clarence R. and Lola Jordan, dated April 6, 1954, recorded April 26, 1954, at book 1, page 35 of the records of Summit County.

Appellant concedes that BLM's decision correctly finds that his application failed to state a valid class 2 claim to the property by virtue of a "1954 tax deed, a previous tax deed in 1929, and the fact that the earliest deed in [his] chain of title is dated later than January 1, 1901." 2/

As justification for its decision, BLM quotes from Board and Departmental decisions and states as follows:

> The Department of the Interior has consistently interpreted the Color of Title Act to mean "that it was intended to give relief in situations where persons in good faith had derived their claimed title from sources other than the Government and that asserted adverse possession of land and acts of improvements alone cannot constitute holding the land under a claim or color of title in good faith within the meaning of the act." Thomas Ormachea, A-30092 (May 8, 1964).
>
> "The requirement of good faith contained in the Color of Title Act necessitates establishing a 20-year period of possession under claim or color of title prior to the time the claimant learned of the defect in (his) purported title. If this requires counting years during which the claimant's predecessors in interest held the land, their good faith must also be established." Mable M. Farlow, 30 IBLA 320 (1977). Joe I. Sanchez, 32 IBLA 228, 232 (1977).
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> "Good faith under the Color of Title Act . . . requires that a claimant and his predecessors in interest honestly believe there was no defect in the color of title and the Department may consider whether such a belief was unreasonable in light of facts actually known or available to the claimant or a predecessor." Lester and Betty Stephens, 58 IBLA 14 (1981).

2/ The BLM decision states as to the class 2 claim:

"The earliest document in the chain of title provided by the applicant is a deed in 1904, after the January 1, 1901 requirement. 'Where the record does not show any instrument purporting on its face to convey the subject land not later than January 1, 1901, the applicant will not have established a meritorius [sic] Class 2 Color-of-Title claim.' Mary C. Pemberton, 38 IBLA 118 (1978). Ray Wheeler and Illa Gene Wheeler, 55 IBLA 370 (1980).

"The documents conveying title, provided by the applicant show two tax sales, one in 1929 and another in 1954. 'A tax deed wipes out any former title to land and initiates a new title, and therefore terminates any adverse possession that may have been traceable (prior to the sale).' W. D. Reams, A-30113, September 23, 1964. 'Acquiring title to public lands by tax deed from a local taxing authority that mistakenly believe it has title . . . initiates a new title for the purposes of determining when possession under color of title commenced.['] Estate of John C. Brinton, 71 IBLA 160 (1983)."

> The fact that miners were allowed to construct houses on company claims or property, that the land itself was not included in the total assessed taxable value until 1981 and prior to that only the improvements were assessed and paid by the purported owner raises doubts as to the issue of good faith. The purported owners, presumably have seen the assessment notices were for improvements only, and could not contend that they believed they owned the lands.
>
> If any predecessor in interest knew of the title defect, the 20-year period must be established after he divested his interest to someone in the chain of title who did not know of the defect and thus possessed the land in good faith. Joe I. Sanchez, supra, Mable M. Farlow, supra.

In his statement of reasons for appeal, appellant notes concurrence with the principle of good faith possession as enunciated by the cases in BLM's decision, but contends that the facts leading to his color-of-title application are sufficiently different to distinguish this case from the Board decisions cited by BLM. Appellant specifically contends that both he and his predecessors in interest held the property encompassed by his color-of-title application in good faith with neither actual nor constructive knowledge of the ownership of the property by the U.S. Government.

Citing Board decisions and the regulations, appellant contends that the common factor in finding either actual or constructive lack of good faith is suspicion of ownership of the claimed parcel by the United States, and that such knowledge was lacking on the part of appellant. As grounds for his contention, appellant notes that until about 1979 the tax notices published by Summit County did not separately itemize amounts levied for real and personal property and therefore, until 1979 property owners had no notice of any adverse claim to the real property interest. Appellant concedes that in 1979 Summit County revised tax notices to separately state assessed valuations for personal and real property. However, appellant contends that there was nothing on the face of the post-1979 tax notices which would alert a property owner that he was not the owner of the real property, that the real property taxes "were not being assessed," or that the United States Government claimed ownership of the real property described in the notice. Appellant has attached two memoranda prepared by BLM, which he asserts evidence the conclusion which exists in Park City, Utah, regarding real property taxation, which was recognized by the county officials (Exhs. B and C). 3/

3/ Appellant quotes from Exhibit B in the statement of reasons as follows: "He [Mr. Martin, Summit County Assessor's Office] indicated that the practice in years past was to assess property where all they had was a description such as 11th House south side of Deer Valley at the rate of $1.00 for the land and the assessed value of the improvements. This is the reason the taxes levied on the subject property were so low over the years until 1979 when Mr. Bertagnole recorded a deed which described the property by metes and bounds. At that time the levied taxes jumped from $27.00 to $380.00 because the assessed value then included the property described as well as the improvements."

Appellant concedes that in Park City, Utah, miners were often allowed to construct houses on property owned by the mining companies for which they worked. Appellant has included as Exhibit C, however, a BLM Confirmation/Report of Telephone Conversation authored by a BLM employee which memorializes a call by that employee to the Summit County Assessor's Office. In this report, the BLM employee notes that descriptions such as "the 11th house southside of Deer Valley" were only assessed at the rate of $1 for the land and the assessed value of the improvements. This method for determining the assessed valuation would continue until such time as a deed containing a metes and bounds description is recorded. Based upon this assessment method, the county levied a $27 tax in 1978 and, after a deed with a metes and bounds description was recorded, $380 in 1981. In a second memorandum, the BLM employee noted the county considered that the taxes for the land would be paid by someone else, like a mining company.

The case file contains a memorandum from the District Manager, Salt Lake City, BLM, to the Utah State Director, BLM. The memorandum concludes that appellant has a sufficient chain of title dating back to 1902 to support a class 1 claim in that "he and/or his grantors held the land in peaceful, adverse possession for more than twenty years under a claim or color of title and valuable improvements have been placed upon the land." The memorandum states as follows:

> Mr. Bertagnole has submitted Quit Claim Deeds (QCD) and other documents (Exhibit 1), which enable us to determine that the property, which he now claims to own, was first occupied in the spring of 1902 when George Thompson built a "two room frame dwelling house" thereon; that at some point between 1912, when he acquired the property, and 1918, when he disposed of it, Carl Hoger (also Hojer) enlarged the house to four rooms; that the property was acquired twice by Summit County and sold by them for taxes in 1929 (Exhibit 1F) and again in 1954 (Exhibit 1H); and that Mr. Bertagnole acquired the property by QCD from Mary E. Dudley in 1980 for the stated sum of $40,000 (Exhibit 1M).
>
> In support of his claim, Mr. Bertagnole has supplied certified copies of a series of QCD's and other documents, which constitute a chain of title from 1902 until 1980 when Mr. Bertagnole purchased the land from Mary E. Dudley. We have made a thorough search of BLM master title and county ownership records and were unable to locate a patent, which conveyed the land upon which Mr. Bertagnole's house is located, to George Thompson or any other individual or corporation. It should be noted that all conveyance documents in Mr. Bertagnole's chain of title are either quit claim deeds or auditors deeds (Summit County) and nowhere in the claim is found a warranty deed. * * *
>
> It is also interesting to note that the taxes assessed on the land jumped from $112 in 1980 to $380 in 1981 (Exhibit 1N3) after the deeds with a proper metes and bounds description were recorded. In the past, according to the Summit County Deputy Assessor for Park City (Martin, 1983 - Exhibit 2), they levied taxes using a description such as "11th House south side of

> Deer Valley" based upon the assessed valuation of the improvements on the land plus $1 for the land itself. After a proper metes and bounds description is recorded, such as in the Dudley to Bertagnole QCD, they levy taxes based upon the assessed valuation of both the land and the improvements thereon. This accounts for the sizeable jump in taxes against the land between 1980 and 1981. [4/]

Memorandum at 1-2.

> As regards good faith, the memorandum provides:
>
> > A good case can be made for good faith on the part of all owners of record subsequent to Mr. Thompson as they each acquired a proper QCD for payment of a sum of money (presumably fair market value) and the deeds were duly recorded with the county. Taxes were paid on the property since about 1911 (Exhibit 1N), perhaps even earlier, another indication of good faith on the part of subsequent owners. Most of the transactions occurred prior to the widespread use of title insurance, warranty deeds and the like. Generally, QCD's were the most common form of title transfer in the area as it was a mining town.
> >
> > BLM and its predecessors made little, if any, attempt at actively managing the land in Deer Valley prior to 1975 other than perhaps some paper shuffling relative to mining claims and other ownership matters. The requirement of good faith can probably be extended over time to the Dudleys, who sold the property to Mr. Bertagnole, as they acquired the property in 1972 before it was common knowledge that there was public land in Deer Valley.

Memorandum at 5.

> > There are also several factors which have clouded the issue sufficiently to cause us to believe that Mr. Bertagnole may have purchased the land in good faith, * * *
> >
> > 1. Mr. Bertagnole had no policy of title issuance or abstract of title for the land. His attorney, Mr. Kinghorn, who was hired by Mr. Bertagnole subsequent to the purchase of the house, has indicated that Mr. Bertagnole researched the Summit County ownership records himself and was satisfied that the [sic] Mrs. Dudley had good title to the land. The chain of title for this house including tax records, would probably appear adequate

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4/ The memorandum notes the first use of a proper metes and bounds description for the land was in the 1980 quitclaim deed from Dudley to appellant. The memorandum states that BLM assumed the "lot" upon which the house rests was surveyed prior to this final transfer and that the description later had to be corrected and the corrected quitclaim deed from appellant to himself is the best deed in the chain of title.

to a person untrained in matters of title. The fact that there was no patent for the land ever recorded for the parcel, the fact that none of the deeds in the title chain were warranty deeds, the fact that the land was encumbered by an unpatented mining claim and others could easily been overlooked by an inexperienced eye.

2. The mineral surveys completed for the Fountain and Chapter Millsite Claims are an additional source of confusion in the area. The Fountain Millsite - Lot 302B and the Chapter Millsite Claim - Lot 335B were part of a group of eight millsite claims located in the Deer Valley area about the same time (1880's) and each was associated with a lode claim of the same name. Each lode and associated millsite claim was surveyed at the same time and each claim was given a consecutive lot number, i. e. Mayflower Lode and Millsite Claims - Lots 220A&B, Olive Branch Lode and Millsite Claims - Lots 226A&B, Good-Ell Lode and Millsite Claims - Lots 227A&B, Yaup Lode and Millsite Claims - Lots 264A&B, Trump Lode and Millsite Claims - Lots 265A&B, Mazepah Lode and Millsite Claims - Lots 301A&B, Fountain Lode and Millsite Claims - Lots 302A&B and Chapter Lode and Millsite Claims - Lots 335A&B. All of the lode claims and six of the millsite claims were subsequently patented. The Fountain Millsite Claim - Lot 302B and the Chapter Millsite Claim - Lot 335B were never patented and at some point in time abandoned for unknown reasons. This failure to patent those claims has resulted in the fragmented, isolated Parcel 18 in Deer Valley. The fact that both Mineral Surveys completed for these never patented millsite claims remain items of record on both the BLM records (Exhibit 4) and the Summit County ownership records (Exhibit 8) could lead an inexperience person to believe they were also patented claims, and, therefore, also private land.

3. When Mr. Bertagnole's deed was first entered on the Summit County land ownership plats, his "lot" was mistakenly drawn on the plat north of Parcel 18 on patented land (Exhibit 8). This could have been an additional source of confusion over location and ownership of the house and the land. It is not known how the county ownership plats portrayed the Dudley house and "lot" as they were described only as the "11th House South side of Deer Valley." The county records have since been corrected to show the actual location of Mr. Bertagnole's property on public land in Parcel 18.

4. There is no record that BLM representatives ever contacted the Dudleys relative to their unauthorized use of public land, specifically Parcel 18. Although it is likely that BLM people knew of the trespass houses on the land as early as 1974 and perhaps before, there is no trespass record, letter or other document which would indicate BLM had given the Dudley's notice that their ownership of the land under their house was in jeapardy [sic] or that the land was public land. This would tend to lend credence to the idea that the Dudley's did have clear

> title to the land since no effort was taken to correct the situation. BLM may be at fault for not giving official written notice relative to an unauthorized use of public land.
>
> 5. Mr. Bertagnole indicates in his application he paid $40,000 for the property and he has added an additional $5,000 in improvements to the property since he purchased it in 1980. We have no way of proving he, in fact, did pay $40,000 for the property or he has added improvements, but if his statement is fact, then it would be a very strong indication of his good faith in the matter. In addition, he has continued to pay substantial property taxes on the property since he acquired it in 1980 another indication of good faith.

Memorandum at 6-7.

The memorandum, however, also discusses the possible lack of good faith, as follows:

> There is evidence that some local people were aware the land was public prior to that time as evidenced by the unpatented mining claim Moose No. 7 held by UPC and an application to purchase the land under the provisions of the Unintentional Trespass Act of 1968 by the Lehmers, who own property adjacent to Parcel 18. There is no direct evidence that the Dudleys were aware that the land was public when they purchased the house, but there is hearsay and other indirect evidence, which would indicate they were aware of the public land problem when they sold the house to Mr. Bertagnole in 1980.
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> There is some indirect and hearsay evidence (Exhibits 9 & 10), which indicates that Mr. Bertagnole may have acquired the house with the knowledge that the underlying land was public land. The existence of Parcel 18 and other public land in the Park City area generally became common knowledge after 1975, when they were identified and located through the BLM planning process and made public knowledge via several public meetings which were part of that process. Both Park City and Summit County officials, as well as people in the Utah Division of Lands and other members of the public, were well aware of the existance [sic] of this public land prior to Mr. Bertagnole's acquistion [sic] of this house in 1980. There is no record that the Dudleys or Mr. Bertagnole ever attended any of the planning meetings, but several other prominent citizens of Park City did attend. There were subdivision plats of record such as that for Snow Park, which showed the location of Parcel 18, that it was BLM (Federal) land and that the Dudley house was located approximately in the center of Parcel 18. There are also hearsay statements by * * * landowners in the Deer Valley area, that they knew the land was public land and that they are quite sure Mr. Bertagnole also knew that fact. It is doubtful that they would willingly testify to that fact under oath.

Memorandum at 5.

The memorandum notes that there are three known adverse claims to the land, which might prevent issuance of a patent to appellant. The adverse claims are described in the applications as: "UM C 3355 Lode Mining claim Moose No. 7," "U-52672-3- State In Lieu Selection," and "Unserialized - Color-of-title - Mary C. Lehmer." 5/

5/ As to UMC 3355, the memorandum provides:

"The conclusions of a Mineral Report prepared September 30, 1983 (Exhibit 11) for a nearby parcel of public land (Parcel 16), which is also covered in part by the Moose No. 7 Claim, indicates, "There is high potential for mineral development on Parcel 16 (Parcel 18 lies just a few hundred feet from Parcel 16 and is within the same geologic formation). The mining operation, if developed, would be underground. Therefore, use of the surface . . . . would probably not unreasonably interfere with the locatable mineral development." (Parenthetical note added). This same report also states, "While the claimants in this case have a high probability of discovering a major ore deposit, they have not as yet uncovered ore and made a legal discovery. Therefore, a validity exam conducted at this time, and especially with the current metals market depression, might cause the claim to be declared null and void. This, however, would be time-consuming and expensive since the claimants would surely appeal any decision that was adverse to them." (Emphasis in original.) As to U-52672-3, the memorandum provides:

"The State of Utah's application to acquire land in the Park City area under its state selection rights dates to 1966-7. This application would also be considered an adverse claim to Mr. Bertagnole's COT claim. His chain of title (even if it can be traced only to 1954) predates the State's application by several years, but we believe the State may have the superior right in this situation (Exhibit 13). The Division of Lands and Forestry has indicated its willingness to work with the "squatters" to protect their rights, if they obtain title to the land. This would be an acceptable, and perhaps even the best, solution to the problem for all involved; however, the State's application also conflicts with the unpatented mining claim listed above. It is doubtful that the State will be able to obtain the land as long as the mining claim encumbers the parcel. This may also be an area where an opinion from the Regional Solicitor would be helpful. We believe the State of Utah would even be willing to amend their SS application to exclude this parcel, if we were able to transfer the land to the unauthorized users under color of title, despite the mining claim."

As to the "Unserialized Color of Title" the memorandum provides:

"Mrs. Lehmer owns land and a house, which borders Parcel 18 just west of Mr. Bertagnole's lot and house. In the mid 1960's (est.) she and her husband bought a lot containing .326 acres just west of Parcel 18 from Mr. and Mrs. Pumphrey. The land was conveyed via a QCD which described this lot by metes and bounds. It was later discovered that approximately 1/3 third of this lot or .1 acre overlapped onto Parcel 18. In 1970 the Lehmers applied to purchase that portion of their lot under the Unintentional Trespass Act of 1968. It was determined at that time they did not qualify under the act and their application was rejected. Recently Mrs. Lehmer and/or her representatives have inquired about applying for the land under Color of Title and they have even obtained application blanks from us, but they have not as yet filed an application. At the time Mr. Bertagnole's lot was surveyed it became apparent that there was a minor (1300 square feet - .03 acre) overlap

As regards problems concerning "Survey of Land," the memorandum states:

> As previously mentioned, Parcel 18 is a small, irregularly shaped hiatus between patented mining claims. The township, which contains Parcel 18, T. 2 S., R. 4 E., SLM, has been surveyed by the Cadastral Survey and many private surveys have been conducted based upon the control established by that Cadastral Survey. We believe it will be very difficult if not impossible to transfer lots even smaller than Parcel 18 to Mr. Bertagnole or other potential COT [color of title] claimants without some supplemental survey plat work being completed for this area. We believe it would be possible for the Cadastral Survey branch to draw a supplemental survey plat for this area dividing Parcel 18 into one or more lots, but Cadastral has consistently declined to undertake any such work for Public Land in the Park City area. [6/]

Memorandum at 9.

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fn. 5 (continued)
between the Lehmer claim and Mr. Bertagnole's claim. Although there exists a conflict between Mr. Bertagnole's claim and a potential claim from Mrs. Lehmer, it appears to us that they have a sufficiently good relationship as neighbors that an amicable compromise could be worked out between their conflicting claims."
Memorandum at 7-8.

6/ The memorandum lists possible solutions to "this problem,: each of which is predicated on prior solution of all other problems listed above in this report." Those solutions are:

"1. Cadastral Survey would draw a supplemental survey plat dividing Parcel 18 into two lots, one north of the Rossi Hill Road and the other south of and including the Rossi Hill Road. BLM could then transfer the north lot to a trust formed by the four possible COT claimants on the land (Bertagnole, Lehmer, Dennis and Webster - See Exhibit 6). The trust could then redivide the land by metes and bounds descriptions to the trust parties based upon a predrafted trust agreement (Crowell, 1983 - Exhibit 12). The lot north of the road could then be transferred to the State of Utah, etc. In this way BLM would be able to obtain FMV for the land and the "squatters" would obtain good title to the land they or their predecessors have occupied for many years.

"2. Cadastral Survey would draw a supplemental survey plat designating Parcel 18 as one lot. The parcel could then be transferred either to a trust of the claimants as above or possibly to the State of Utah under their SS rights. Problems under this method of transfer to the claimants would be that not all of Parcel 18 is occupied and/or claimed by them (just that portion north of the Rossi Hill Road) and it would be very costly for them to purchase the entire parcel as land values are very high in this area. If we were to transfer the land to the State under this method, assuming we could, they would inherit the unauthorized use problems with the tract, but they would also derive all revenue from lease and/or sale of the land.

"3. We have a Solicitor's Opinion (Exhibit 13) which indicates it is possible and legal to transfer small, irregular parcels such as Parcel 18 by

The memorandum concludes as follows:

> A. While there are minor problems with the validity of Mr. Bertagnole's right to the land under COT such as good faith, we also feel they are not of sufficient merit to reject his application outright. Transfer of this land to Mr. Bertagnole and other potential claimants is an acceptable solution (although not necessarily the best) to this problem because it would return FMV [fair market value] of the land to the United States while providing those people with a good marketable title to their land.
>
> B. The problem of adverse claims in this case seems to be the greatest obstacle to transfer of the land to either the claimant or even to the State of Utah. We definitely believe that a Regional Solicitor's Opinion will be necessary to clarify the relationship between (1) the COT Claim and the unpatented mining claim, (2) between the COT Claim and the SS [state selection] application and (3) between the SS application and the unpatented mining claim. Our opinion is that transfer to the State under the In Lieu rights would be the best solution to the problem because they have indicated their intention to treat the "squatters" fairly and they would not be burdened by the survey problem. They could transfer the land to the private parties by metes and bounds based upon a private survey, where we cannot. Also the amended Park City MFP includes a decision to transfer Parcel 18 to the State under their In Lieu Selection rights. The unpatented mining claim encumbering the parcel will surely prevent us from transferring the land to the State, unless BLM undertakes a costly validity determination and is successful in declaring the claim invalid or the State is able to convince the claimant to relinquish his claim in favor [of] a preference right State mineral lease. If a Solicitor's Opinion determined that the COT claim is superior to the mining claim and we could patent the surface to the COT claimant

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fn. 6 (continued)
an "exception description." This is, in fact, the means we had intended to use in transferring the land to the State of Utah. The problem with this type of description is that it is very difficult to describe such a small parcel by exception and not include other parcels of public land, e. g. Parcel 16, which is quite close to Parcel 18, in the description. If we could adequately describe Parcel 18 by this method, we could then transfer the parcel as in item 2 above with similar problems.

"4. A fourth possibility would be to not transfer the parcel and to lease it to the parties who now occupy it under Section 302 of FLPMA. Even then we would need an adequate means of describing the lease lots. It may be possible to adequately describe the lots under a lease by exception with a supplemental (although not necessarily official) metes and bounds description. This solution would not comply with the Park City MFP, which in essence requires BLM tro [sic] dispose of or remove itself to the extent possible from active management of the public land in the planning unit." Memorandum at 9.

> with a reservation for minerals, this would then probably be the best solution to the problem. If the mining claim is determined to be superior to both other claims to the land, then we would have to either lease the land to the occupants or require them to remove their property from public land in lieu of conducting a validity determination as indicated above.
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> C. Should the adverse claim problem be adequately solved, then it is our opinion that a supplemental survey plat lotting Parcel 18 into one or two lots would be the best solution to the legal description problem. The description by exception solution would be [sic] probably be acceptable if we transfer to the State, but much less acceptable if we transfer to the COT claimant(s).
>
> D. Finally, if all problems can be resolved in favor of the COT claimant in this case, we would encourage all "squatters" on the land to file a claim on the land so that all unauthorized use problems can be resolved in one action. The final decision on this case will very likely set the precedent and determine our ultimate course of action for all the unauthorized use cases on Parcel 18.

Memorandum at 10.

[1] To be entitled to a patent under the Color of Title Act, a class 1 claimant must establish that each of the statutory requirements have been met. The statute directs the Secretary of the Interior to issue a patent for up to 160 acres of land to a person who has in good faith peacefully and adversely possessed public lands under color of title for more than 20 years, placing valuable improvements on the land or cultivating some part thereof. 43 U.S.C. § 1068(a) (1976). Carmen W. Warren, 69 IBLA 347 (1982). The evidence before us clearly establishes a chain of title of more than 20 years and the fact that there are improvements on the land. The proof of these matters is clear, substantial and not questioned by BLM. The only question is the proof of good faith belief that the land was owned by appellant and his predecessors in interest.

[2] Good faith under the Color of Title Act requires that a claimant and his predecessors honestly believe they were invested with title. In determining whether appellant honestly believed that he was seized with title, the Department may consider whether such belief was unreasonable in the light of facts then actually known to him. Carmen M. Warren, supra. Knowledge of Federal ownership of the land in question, or existence of facts or "common" knowledge within a community as to Federal ownership, negates the requisite good faith. 43 CFR 2540.0-5(b); United States v. Wharton, 514 F.2d 406 (9th Cir. 1975); Day v. Hickel, 481 F.2d 473 (9th Cir. 1973).

We note the decision of August 6, 1984, correctly states the law as expressed in the cases cited. However, we find that the application of the general statements of law to the facts of this case requires a closer examination.

First, we will summarily dispose of the application of the law to the determination regarding a class 2 color-of-title claim. The decision states

that there is no instrument purporting to convey the land prior to January 1, 1901, and appellant has not established a class 2 color-of-title claim. Appellant agrees and so do we.

With respect to the class 1 color-of-title claim, the decision states:

> The documents conveying title, provided by the applicant [to] show two tax sales, one in 1929 and another in 1954. "A tax deed wipes out any former title to land and initiates a new title, and therefore terminates any adverse possession that may have been traceable (prior to the sale)". W. D. Reams, A-30113, September 23, 1964. "Acquiring title to public lands by tax deed from a local taxing authority that mistakenly believes it has title . . . initiates a new title for the purposes of determining when possession under color of title commenced. Estate of John C. Brinton, 71 IBLA 160 (1983). [Emphasis in original.]

This is a correct statement. However, there is sufficient time since the last tax sale (1954) to establish a color-of-title claim.

The decision states at page 2:

> The fact that miners were allowed to construct houses on mining company claims or property, that the land itself was not included in the total assessed taxable value until 1981 and that prior to that only the improvements were assessed and paid by the purported owner raises doubts as to the issue of good faith. The purported owners presumably have seen the assessment notices were for improvements only, and could not contend that they believed they owned the lands.

This determination is in error. The record discloses the property owner paid taxes on the land, as well as the improvements. The assessor chose to assess the land at $1, not because of a determination that the real property was not owned, but because the assessor was unable to determine how much real property was to be assessed. The arguments by appellant in the statement of reasons, the record, and the well-written and researched memorandum by the District Manager, previously quoted at length, leads us to a different conclusion.

As noted in the BLM decision which is the subject of this appeal, the obligation for providing a valid color of title is upon the claimant. 43 U.S.C. § 1068 (1976); Mable M. Farlow, supra. In the present situation appellant has met his burden of proving that he and his predecessors in interest believed in good faith that they were invested with title. Evidence to the contrary, while present, is unsupported or admittedly hearsay in nature. Without stronger evidence that appellant or his predecessors in interest did or should have known the land was owned by the Federal Government, we cannot reach the determination made in the August 6, 1984 decision. Justice dictates that evidence which would overcome a color-of-title claim be weighed in the same manner as the evidence which supports such a claim. Documented evidence cannot be overcome by hearsay evidence.

Notwithstanding the determination made above, there remains one issue to be resolved before a patent can be issued to appellant. An unpatented lode mining claim existed on the land prior to appellant's filing of an application under the color of title Act. If this claim is valid, no color-of-title patent can be issued to appellant, as equitable title vests only upon filing the color-of-title application. See Benton C. Cavin, 83 IBLA 107 (1984). In order for patent to issue the mining claim must be extinguished, at least as to the lands subject to the color-of-title application. See Hazel Ann Smith, 82 IBLA 230 (1984), for comparable requirement regarding a land sale. We note that a mineral examiner's report prepared in 1983 states that the mining claimant "has not uncovered ore or made a legal discovery" and therefore there is no basis for a determination by this Board that the claim is valid. However, a mining claim contest must be instituted, unless the mining claimant relinquishes that portion of the mining claim in conflict with the color-of-title claim. Such a contest may be initiated at the instance of BLM pursuant to 43 CFR 4.451 or by Bertagnole pursuant to 43 CFR 4.450.

Therefore, pursuant to the authority delegated to the Board of Land Appeals, by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office, BLM, is reversed and the file is remanded for further action consistent herewith.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Edward W. Stuebing
Administrative Judge.